IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos.3271 TO 3273 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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ARJANJI MAFAJI THAKOR & ORS. - Appellants
Versus
SPECIAL LAQ OFFICER & ORS. - Respondents

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Appearance :
M/S YATIN SONI & HITESH PATEL for Appellants.
MR JASWANT K SHAH, AGP for Respondent No.1.
MR AJAY R MEHTA for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 10/07/2007

COMMON ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. In view of the request made by the learned advocates for the parties, all the three appeals have

been taken up for disposal together. First Appeal Nos.3271 & 3272 of 2007 filed by the claimants under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated August 8, 2005 rendered by the Reference Court in Land Acquisition Reference Case Nos.5/2002 & 6/2002 by which the claimants have been awarded additional amount of Rs.46/- per sq.mt. for their acquired lands, over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.22/- per square metre by his award dated May 7, 2001. First Appeal No.3273 of 2007 is directed against judgment and award dated December 19, 2005 rendered by the learned Principal Senior Civil Judge, Gandhinagar, in Land Acquisition Reference No.71 of 2002, by which the claimant is awarded additional amount of compensation at the rate of Rs.33.50 paise per sq. mt. over and above the compensation offered to him by the Special Land Acquisition Officer at the rate of Rs.18/- per sq. mt. by his award made under Section 11 of the Act. The claim of the claimants in the instant appeals is that they should have been awarded further amount of compensation at the rate of Rs.90.70 Paise per sq.

mt. for their acquired lands.

2. A proposal was received by the State Government to acquire the lands of village Uvarsad, Taluka and District Gandhinagar for the public purpose of well drilling by O.N.G.C. On perusal of the said proposal, the State Government was satisfied that the lands of village Uvarsad specified therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on November 27, 1998. Thereafter, necessary inquiry as contemplated by Section 5A(2) of the Act was made and a report was submitted by the Special Land Acquisition Officer to the State Government. On the basis of the said report, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on May 17, 2000. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.200/- per sq. mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his

award dated May 7, 2001 offered compensation to the claimants at the rate of Rs.22/- Paise per sq. mt. Yet another proposal was received by the State Government to acquire lands of village Uvarsad, Taluka & District Gandhinagar for the public purpose of drilling of Well No.K-307 K.L.D.S. of ONGC. The said proposal was accepted, as a result of which, notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on October 6, 1997 followed by a declaration made under Section 6 of the Act, which was also published in the Official Gazette on March 6, 1999. The claimant therein was offered compensation at the rate of Rs.18/- per sq. mt. by the Special Land Acquisition Officer by his award dated May 11, 2000. The claimant was of the view that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, he submitted application under Section 18 of the Act requiring the Special Land Acquisition Officer to refer his case to the Court for determination of just amount of compensation payable to him. Accordingly References were made to the District Court, Gandhinagar where they were numbered as Land Acquisition Reference Nos.5/2002, 6/2002 & 71/2002.

3. On behalf of the claimants witness Becharji Somaji Thakore was examined at Exhibit 25. After giving particulars of the lands acquired, the witness stated that his village was fully developed and as the lands acquired were highly fertile, each claimant was earning net income of Rs.40,000/- to Rs.50,000/- per year per Vigha from sale of agricultural produces. During the course of recording of his testimony, the said witness produced previous award of the Reference Court relating to the lands of village Uvarsad rendered in Land Acquisition Case No.30/99 at Exh.21 and claimed that as the lands acquired earlier were similar to the lands acquired in the instant cases, the claimants should be awarded enhanced compensation on the basis of the said previous award. Though, this witness was cross-examined on behalf of the acquiring authorities, nothing substantial could be elicited.

4. As far as Land Acquisition Reference No.71/2002 is concerned, the claimant had examined himself at Exh.22 and he had also relied upon the previous award of the Reference Court relating to the lands of this very village which was produced by him

at Exh.22.

5. On behalf of the acquiring authorities, witness Udesinh Karsanbhai Vaghela, who was then discharging duties as Deputy Collector and Special Land Acquisition Officer, O.N.G.C., Sabarmati was examined at Exhibit 27. According to him, before determining the market value of the lands acquired, the Special Land Acquisition Officer had taken into consideration all the relevant factors and, therefore, the claimants were not entitled to enhanced compensation.

6. On appreciation of evidence adduced by the parties in Land Acquisition Reference Nos.5/2002 & 6/2002, the Reference Court by award dated August 8, 2005 awarded additional amount of compensation to the claimants at the rate of Rs.46/- per sq. mt. giving rise to First Appeal Nos.3271 & 3272 of 2007; whereas on appreciation of evidence adduced by the parties in Land Acquisition Reference No.71/2002, the Reference Court by judgment and award dated December 19, 2005 granted additional amount of compensation to the claimant at the rate of Rs. 33.50 Ps. Per sq.mt. for his acquired land, giving rise to First Appeal

No.3273/2007.

7. This Court has heard M/s.Yatin Soni & Hitesh Patel, learned counsels for the appellants as well as Mr.J.K.Shah, learned Assistant Government Pleader, for the respondent No.1, and Mr.Ajay R. Mehta, learned Senior Advocate for the respondent No.2 at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsels for the appellants, which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

8. The learned Counsels for the parties have agreed that the impugned judgment be set aside and case be remitted back to the Reference Court for fresh decision in accordance with law in view of the decision rendered in First Appeal Nos.3202 to 3204 of 2007 by Division Bench of this Court vide judgment dated March 5, 2007. It may be mentioned that in First Appeal Nos.3202 to 3204 of 2007, Civil Application Nos.576 to 578 of 2007 were filed seeking permission to adduce additional evidence at the appellate stage, which were allowed, after which the appeals were remanded to the Reference Court for

fresh decision on the basis of evidence which may be led by the parties. In view of the consensus arrived at between the learned Counsels for the parties, this Court is of the opinion that interest of justice would be served if common award challenged in the appeals is set aside and matters are remitted to the Reference Cort for fresh decision after permitting the parties to adduce evidence in support of their respective case.

9. For the foregoing reasons, the appeals are allowed. The common judgment and award dated August 8, 2005 rendered by the Reference Court in Land Acquisition Reference Nos.5/2002, 6/2002 & 71/2002 is hereby set aside. The matters are remanded to the Reference Court for deciding afresh after permitting the parties to lead fresh evidence. As the acquisition proceedings were initiated pursuant to publication of notification issued under Section 4 of the Act in the Official Gazette on November 27, 1998, the Reference Court is directed to dispose of the References as early as possible and preferably within six months from the date of the receipt of the writ. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs.

The R & P, if received, be sent back immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

(patel)